THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 24769 of 2003

Date: 16 .09.2005

Between:

A.Rajendra Prasad, s/o. Nagabushanam,
Estates Officer, The Singareni Collieries
Company Limited, Bhupalpalli, Warangal dist.

…Petitioner

and

The Singareni Collieries Company Limited,
Rep. by its Chairman and Managing Director,
Singareni Bhavan, Red Hills, Khairatabad,
Hyderabad

…Respondent

ORDER:

Challenging the punishment of withholding two annual grade increments of the petitioner by the disciplinary authority, as confirmed

by the appellate authority viz. the Board, the present Writ Petition is filed.

The brief facts that are necessary for disposal of the Writ Petition are as follows:

The petitioner is working as Estates Officer with the respondent-company; that he was served with a charge sheet dated 19.07.2000 alleging that he had claimed and drawn amounts producing bogus I Class/ II AC railway tickets on five occasions for the journeys purportedly performed from Secunderabad to Rajahmundry and Bangalore and back, from April, 1999 to August, 1999, and that he claimed amounts on bogus II AC railway tickets for the journeys purportedly performed with family from Secunderabad to Tirupathi and back; that the petitioner produced a letter from the Regional Manager, APFDC, Rajahmundry to prove that he visited on official work to Rajahmundry; since there was a long time gap, the railway authorities also could not furnish the correct clarifications; that the certificate issued by the railway authorities on 30.05.2001 clearly establishes that he had undertaken the journey; that the petitioner was denied reasonable opportunity to defend his case; that the disciplinary authority failed to appreciate his defence and the findings of the disciplinary authority are without basis and without application of mind, amounting to pre-determining the issue; the charges framed were not proved in the enquiry; the appellate authority did not give personal hearing or provided reasonable opportunity to the petitioner; hence, he prays to allow the Writ Petition.

The respondent filed counter affidavit denying averments in the petitioner's affidavit and contending that on certain allegations, the petitioner was charged under Rule 5(1) and 5(5) read with Rule 4(1) of the Conduct, Discipline and Appeal Rules; that not satisfied by the explanation of the petitioner dated 26.07.2000, a regular enquiry was ordered and the Enquiry Officer submitted report finding the petitioner

guilty; on considering the representation of the petitioner dated 03.02.2000, the disciplinary authority imposed the punishment; on appeal by petitioner, the appellate authority in its meeting held on 29.08.2003 considering all aspects, confirmed the punishment; the petitioner failed to submit the excess fare tickets for the amounts he claimed and drawn; he claimed the fares basing on bogus tickets and defrauded the company for dishonest pecuniary gain; that the dispute remains only with regard to the class of journey; that he had claimed and drawn railway fares of higher class without proof; in the appeal filed by the petitioner, there was no request for personal hearing; that the railway authorities confirmed vide letter dated 12.11.2001 that the excess fare ticket numbers stated by the delinquent did not fit into any of the series of excess fare tickets sold during the relevant period; that in the past also, the petitioner was in the habit of claiming and drawing of railway fares of higher class on bogus tickets and that on an earlier occasion also, after enquiry, a penalty of withholding of two increments was imposed on him; that the petitioner was given every opportunity to defend his case; the scope of judicial review is limited and all the factual aspects raised by the petitioner can not be gone into in it; hence, he prayed for dismissal of the Writ Petition.

The learned counsel for the petitioner contended that the findings are not based upon any evidence and the Enquiry Officer having not satisfied with the evidence available on record, sought for clarification from the concerned authority and thereafter, no communication is received from the competent authority; therefore, holding the petitioner guilty of the charges is a perverse finding; that the case of the petitioner is not considered in right perspective and the Enquiry Officer has not considered the documents filed on behalf of the delinquent officer; that the disciplinary authority accepted the conclusions arrived at by the Enquiry Officer mechanically, which amounts to predetermining the issue; that the appellate authority did not give any personal hearing to consider his case and therefore, he prays to allow the Writ Petition.

On the other hand, the learned standing counsel appearing on behalf of the respondent contended that the findings of the Enquiry Officer are based upon some evidence; it is not for this Court to re-appreciate the evidence and come to a different conclusion; that the material available on record would clearly indicate that the Writ Petitioner committed misconduct and therefore, the punishment imposed is proper; there are no grounds to interfere with the impugned proceedings; hence, he prayed to dismiss the Writ Petition.

A finding is perverse if it is based upon no evidence whatsoever or if it is based on mere suspicion since mere suspicion should not be allowed to take the place of proof even in domestic enquiry. The conclusions of the Enquiry Officer must be based on some relevant material. Mere non-consideration of some evidence will not amount to perversity. If the findings are based upon misreading of the material evidence or so unreasonable or grossly unjust that no reasonable person could judicially arrive at such conclusion, then this Court interferes with the findings. Truth or otherwise of the charge is a matter for the disciplinary authority to go into.

In the case on hand, the petitioner is working as Estates Officer with the respondent-company. The charges levelled against the petitioner are as follows:

> "He claimed and drawn amounts towards-
>
> a. fares of bogus 1st Class/AC 2nd Class Railway Fare Tickets on 5 occasions for the journeys purportedly performed by him in trains from Secunderabad to Rajahmundry and Bangalore (and back to Secunderabad) during the period from April, 1999 to August, 1999, and
>
> b. LTC (Home Town) for the year 1999 on bogus AC 2nd Class Railway Tickets for the journeys purportedly performed in trains by him along with his family members from Secunderabad to Tirupathi and back to Secunderabad during the period from 30.06.1999 to 04.07.1999."

For the aforesaid lapses, a charge sheet was issued under Rule 5(1) and 5(5) read with Rule 4(1) of the Conduct, Discipline and Appeal Rules, for which the petitioner gave an explanation dated 26.07.2000 and 14.08.2000. As the explanation was not satisfactory, a regular departmental enquiry officer was appointed, who enquired into the charges levelled against the petitioner. After giving an opportunity to the petitioner, the Enquiry Officer submitted his report on 31.12.2002. The findings of the Enquiry Officer were accepted and thereafter, punishment has been imposed withholding two annual grade increments of the petitioner due on 01.04.2004 and 01.04.2005 without cumulative effect.

During enquiry, the Chief Vigilance Officer of respondent-company sought clarification from the South Central Railway with regard to genuineness of certain tickets on different dates and different trains, for which Railway authorities, vide their letter dated 12.11.2001 informed the respondents that *prima facie*, the EFT Nos. referred are not genuine because they did not fit into any series of genuinely issued EFTs. On a letter dated 28.04.2001 addressed by the petitioner to the Railway authorities, the authorities furnished the details on 30.05.2001. Basing on the above, the Enquiry Officer, in the first instance, came to a conclusion proposing to contact the Vigilance Department, Kothagudem to clarify this matter because the railway versions are differing vide letters dated 30.05.2001 and 12.11.2001, and after getting clarification, the case will be examined and intimated later. But, thereafter, according to the learned counsel for the petitioner, no clarification was received from the railway authorities and the Vigilance Department, Kothagudem. The letter dated 30.05.2001 of the railway authorities would go to show that the South Central Railway authorities on verification, found that ticket holder bearing no.4978146 travelled in II sleeper and later on shifted to II AC class, but II AC charts were not available. In some cases, the EFTs were not traceable because of lapse of more than six months'

period. But, the South Central Railway authorities vide letter dated 28.02.2000 informed the Vigilance authorities, Kothagudem that the petitioner has not performed the journeys from Secunderabad to Bangalore on the dates mentioned in the letter.

There can not be any oral evidence to show whether the petitioner travelled in II sleeper or II AC class. Even in the absence of any oral evidence, the same can be proved by producing documentary evidence. One of the documents produced before the Enquiry Officer, which is not challenged even by the petitioner, is the proceedings of the South Central Authorities dated 12.11.2001 wherein it is stated that no such EFT nos. were issued in the month of June or July, 1999 and that *prima facie*, the EFTs are not genuine as they do not fit into the series of genuinely issued EFTs. The grievance of the petitioner is that the verification done by the railway authorities dated 30.05.2001 has not been taken into consideration. This letter of the railway authorities would go to show that the petitioner traveled in II sleeper and later in II A.C., but the charts were not available in respect of the five journeys. In respect of eight journeys, the charts and EFTs were not traceable due to lapse of time. Therefore, the petitioner *prima facie* failed to show that he travelled in the class for which he claimed T.A. It is not for the delinquent officer to prove the same, but at the same time, the petitioner placed strong reliance on the document dated 30.05.2001, which could not *prima facie* establish that he travelled in the class for which he claimed the T.A. Therefore, there is some evidence on record to show that the petitioner claimed and drawn the amounts for which he did not actually perform the journey.

It is not the case of violation of any principles of natural justice or not following proper procedure. So also, it is not the case where the power of the authority to impose the punishment is challenged. The

findings are based upon some evidence on record. It is not a case of mere suspicion about the misconduct of the petitioner. There can not be any dispute that suspicion, however strong, can not take the place of legal proof. But, here, it is a case where the petitioner travelled with some EFT nos., not being issued by the railway authorities, and claimed and drawn the amount basing on them. Therefore, it can not be said that the findings are perverse. The disciplinary authority has rightly placed reliance on the findings of the Enquiry Officer. There are no grounds to interfere with the findings of the disciplinary authority as confirmed by the appellate authority, since adequacy or reliability of the evidence is not the matter to canvass before this Court.

The Writ Petition is, devoid of merits and is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

16.09.2005

DRK